

**Remarks**

Reconsideration and withdrawal of the rejections of the claims, in view of the amendments and remarks herein, is respectfully requested. Claims 1 and 23 are amended. The amendments are intended to advance the application and are not intended to concede to the correctness of the Examiner's position or to prejudice the prosecution of the claims prior to amendment, which claims are present in an application related to the above-identified application. Claims 1-2, 4 and 20-28 are pending.

Amended claims 1 and 23 are supported by originally-filed claim 1 and at page 14, lines 25-30 of the specification.

The Examiner rejected claims 1 and 23 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amendment to claims 1 and 23 to recite "having DNA repair activity" render the § 112(1) rejection moot.

The Examiner rejected claims 1, 20, 22-23, and 28 under 35 U.S.C. § 102(b) as being anticipated by either NCBI Accession No. AA577530 or NCBI No. AA535711. These rejections are respectfully traversed.

NCBI Accession No. AA577530 discloses 431 nucleotides of an expressed sequence tag (EST) from a human colon tumor in which the high quality sequence stops at base 386. NCBI Accession No. AA535711 discloses 408 nucleotides of a 2473 bp insert of an EST from a human colon, 137 nucleotides of which are from high quality sequence.

Neither Accession No. AA577530 nor Accession No. AA535711 discloses an isolated and purified nucleic acid molecule encoding a vertebrate DNA repair polypeptide having SEQ ID NO:2, e.g., one encoded by SEQ ID NO:1, or a biologically active fragment thereof having DNA repair activity, an isolated nucleic acid molecule comprising a promoter operably linked to a nucleic acid segment encoding SEQ ID NO:2, or an isolated nucleic acid molecule comprising a promoter operably linked to a nucleic acid segment which encodes a fusion polypeptide comprising at least a portion of a DNA repair polypeptide which binds an antibody specific for SEQ ID NO:2.

**AMENDMENT AND RESPONSE UNDER 37 CFR § 1.116 – EXPEDITED PROCEDURE**

Serial Number: 09/837602

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Title: DNA ENCODING A DNA REPAIR PROTEIN

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Accordingly, withdrawal of the § 102(b) rejections is respectfully requested.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney 612-373-6959 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date JUNE 17, 2003

~~by fax on 6/19/03~~  
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Box AF, Commissioner of Patents, Washington, D.C. 20231, on this 17<sup>th</sup> day of June, 2003

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Signature